

BEFORE THE PUBLIC DISCLOSURE COMMISSION  
OF THE STATE OF WASHINGTON

IN THE MATTER OF ENFORCEMENT	)	PDC CASE NO: 00-884
ACTION AGAINST	)	
	)	
Gary Toothaker, Superintendent	)	Notice of Administrative
Mukilteo School District No. 6	)	Charges
	)	
Respondent.	)	
_____	)	

IT IS ALLEGED as follows:

**I.**  
**JURISDICTION**

Jurisdiction of this proceeding is based on Chapter 42.17 RCW, the Public Disclosure Commission, Chapter 34.05, Administrative Procedure Act, and Title 390 WAC.

**II.**  
**LAW**

RCW 42.17.130 states in part: "No elective official nor any employee of his office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly,...for the promotion of or opposition to any ballot proposition. Facilities of public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency and clientele lists of persons served by the office or agency..."

### **III.** **BACKGROUND**

Mukilteo School District No. 6 placed two ballot propositions before voters on March 14, 2000. The first was to authorize the sale of \$48,085,000 in general obligation bonds to fund new construction, technology purchases, construction of and improvements to athletic fields, improvements to existing buildings, and security and safety improvements. The second ballot proposition was a \$34.8 million renewal of the district's two-year Maintenance and Operations levy set to expire at the end of 2000. Both measures were rejected by voters on March 14, 2000. The levy proposal fell 35 votes short of the 60 percent majority required for passage.

The school board decided to place both propositions on the ballot again on May 16, 2000. School districts may only place a levy on the ballot two times in one year. Therefore, if the Maintenance and Operations levy had failed on May 16<sup>th</sup>, the district would have lost at least one calendar year of levy funding. Following the March 14<sup>th</sup> failure of the bond and levy ballot propositions, Mukilteo School District began an aggressive effort to distribute information about the two measures that would be placed before voters on May 16, 2000. Voters approved both measures on May 16, 2000.

On April 11, 2000, following defeat of the bond and levy on the March 14<sup>th</sup> ballot, George Annillo filed a complaint with the PDC alleging that employees of Mukilteo School District were using school time, resources and personnel to promote a yes vote for the May 16<sup>th</sup> ballot measures.

### **IV.** **FACTS**

These charges incorporate the Report of Investigation and all exhibits by reference.

**Mid-Year Report** – Mukilteo School District publishes an Annual Report, generally in the fall of each school year. The district does not have a history of publishing a Mid-Year report.

However, in January, 2000, preceding the upcoming March 14, 2000 ballot measures, the district published its first ever Mid-Year report, in the same format as the Annual Report, subtitled “A REPORT TO THE COMMUNITY ABOUT MUKILTEO PUBLIC SCHOOLS.” In September, 1999, the School Board proposed that the district produce a semi-annual publication similar to the annual report that would be written by students and mailed at district expense to residents of the district. The original proposal evolved into a proposed “exchange program” for student reporters from the district’s two traditional high schools. The district ended up producing a one-time only Mid-Year Report in January, 2000 that reported district news, but focused on the March 14 bond and levy. The Mid-Year report discussed how Mukilteo students had scored high in state tests. It then described the March 14 bond and levy proposals. It directed the reader to the inside of the publication and to the district’s website for additional information about the bond and levy. The report went on to highlight various accomplishments of the district and gave more details about the bond and levy proposals. The final page of the Mid-Year report was a letter from Gary Toothaker, Superintendent of Mukilteo School District. His letter summarized the successes of the district and made a plea for readers to support the bond and levy by saying, *“As the superintendent, it’s my job to look to the future. In March, voters will be asked to approve a \$46.7 million package of projects and the renewal of a local levy that provides 16 percent of our funding. Both are intended to improve the quality of the education we provide. . . . We have the responsibility for providing basic education to the people who will be leading our community in the decades ahead. Working together with you, the citizens of this school district, we intend to create that bright future for the children we are charged with educating.”* The district discontinued the Mid-Year Report after one issue. The reason given was to reduce the budget. The District spent \$12,067 to produce and mail the Mid-Year Report. The report promoted passage of the March 14 and May 16 bond and levy proposals.

**TELL ME MORE ABOUT . . . Bond & Levy Proposal** - Before the March 14, 2000 bond and levy election, the district published a document entitled *“TELL ME MORE ABOUT . . . Bond &*

*Levy Proposal.*” (See Report of Investigation – Exhibit 8) The document was sent to 1,700 “opinion leaders” and citizens who had requested that they receive additional information about the operation of Mukilteo schools. The document provided a detailed description of the bond and levy and included the costs associated with the various areas covered by the proposal. The district sent the information to “opinion leaders” and others but failed to send the information to all district residents.

**Various Flyers Published by the District** – Under the general direction of Superintendent Toothaker, the district published at least five separate flyers to advertise the March and May ballot measures. These publications were developed primarily by Andy Muntz, Manager of Communications and Public Relations for the district. The district did not keep records of how many copies of each flyer were produced, but stated that they produced hundreds of each flyer at a total cost of \$3,331. The flyers were left in public areas of Mukilteo schools and were made available at public meetings conducted by the district. Most of the flyers were not mailed to the public.

One of the flyers was entitled “*What’s so important about the local levy?*” (See Report of Investigation (ROI), Exhibit 1) It was distributed prior to the May 16<sup>th</sup> election. It started out by saying, “*What does the local levy mean to your Mukilteo School District? Plenty! Here’s what the local levy does to provide a better education for the children in our community:*” It went on to highlight various programs funded by the levy, the cost of the levy, and the impact if the levy were to fail on May 16. The flyer also directed readers to the district’s Internet site for additional information. This flyer was distributed to parents of the district’s students with a letter from Board President Ron Woldeit (discussed later).

A second flyer was entitled “*What Will the May 16 Election Mean to Athletic Programs?*” (See ROI, Exhibit 3) The flyer described the impact of the bond and levy on sports and athletics in the Mukilteo School District community. The flyer was not balanced because it was designed for

individuals with an interest in sports and athletic programs and because it did not state the total cost to the community. Without saying how much money the district would raise from the measures, it said the bond and levy would cost taxpayers an additional 68 cents per \$1,000 of assessed valuation in 2001, an increase from \$4.57 to \$5.25 per \$1,000 of assessed valuation. The flyer also stated that the tax for Mukilteo School District property owners is one of the lowest in the area and directed readers to the school's Internet site for more information.

A third flyer was entitled *What if the Bond and Levy Fail*" (See ROI, Exhibit 9). This flyer was handed out prior to the May 16 election. It did not inform the readers of the amount to be raised by the bond or levy. The flyer described various impacts that would occur if the bond and levy were to fail on May 16. The headings included, "*Teachers and staff members will be laid off*", "*Programs and activities will be eliminated*", "*The high schools will be overcrowded*", "*Schools may be restructured*", "*The condition of school buildings would deteriorate*", and "*Classroom instruction will suffer*". Under the heading, "*Programs and activities will be eliminated*" the flyer said a levy failure would mean ... "*the elimination of all sports activities – no football, no cheerleaders, no marching band, no chess club or foreign language club, no school plays, and no elementary music program.*" The flyer said the descriptions of the consequences of a levy failure were not intended as a scare tactic, but to keep the readers informed of the choices they had on May 16. This flyer was later converted into an electronic flyer and placed on the district's Internet site.

**Letters to the Editor** – Superintendent Toothaker used district equipment and staff to write six weekly guest editorials promoting the bond and levy in the local newspaper, *The Mukilteo Beacon*, during the six weeks preceding the May 16 election. (See ROI, Exhibit 12)

Superintendent Toothaker had a standing invitation to write guest editorials, but did not take advantage of the offer until after the March 14, 2000 bond and levy failures. The editorials were published weekly between April 5 and May 10, 2000. Each of the six editorials emphasized the

necessity of successful bond and levy campaigns. The April 26<sup>th</sup> editorial started out by saying, *“Voters in the Mukilteo School District have a great opportunity on May 16 to do something special for children, families, and future generations. That’s the day voters will be asked to approve two ballot items – renewal of the maintenance and operations levy and passage of a \$48 million bond issue for school construction and facility improvements.”*

In the May 3<sup>rd</sup> editorial, Superintendent Toothaker said, *“My wife and I just paid property taxes on our house. Our Mukilteo School District taxes were \$1,798.39. I will pay \$268.19 more next year on my annual Mukilteo School district tax bill if the levy and bond pass. That amounts to \$5.16 per week. Tax me! I want to see my property grow in value and I know that maintaining the quality of our schools will make it more valuable.”*

**Special Mailing by School Board President Ron Woldeit** – On March 31, 2000, Ron Woldeit, President of the Mukilteo Board of Education, wrote a letter to the parents of the students in the district advising them of pending staff layoffs and program reductions if the levy were to fail a second time on May 16, 2000. The subject line of the letter read, “STAFF LAYOFFS AND PROGRAM REDUCTIONS.” Rather than confine his remarks to the legitimate purpose of describing the board’s responsibility to timely issue Reduction in Force notices and develop a Reduced Educational Programs Plan resulting from the March 14<sup>th</sup> levy failure, Board President Woldeit used the letter to talk about and promote passage of the May 16<sup>th</sup> levy election. In addition, the mailing included an enclosure entitled, *“What’s so important about the local levy?”* (described above under the sub-heading *“Various Flyers Published by the District.”* ) The enclosure directed readers to the district’s Internet site for additional information, and the Internet site included a PowerPoint presentation that contained slides, some of which promoted the bond. By sending the letter from the President of the Board of Education rather than from a district staff person, the district sent a strong message to the parents of the students in the district about the seriousness of the bond and levy failure and the importance of the bond and levy passing on May

16<sup>th</sup>. In addition, the letter was sent only to parents of the district's students, rather than to all residents of the district. The district paid \$1,862 to produce and mail this letter and enclosure.

**Vital Information about the Bond and Levy Propositions on the May 16<sup>th</sup> Ballot and the Future of the Mukilteo School District** – A flyer entitled “*Vital Information about the Bond and Levy Propositions . . .*” was produced and sent to all residents of the district preceding the May 16 election at a cost of \$12,785. (See ROI – Exhibit 2) This flyer promoted passage of the May 16 bond and levy. It was printed on card stock and was equal in size to three, connected, 8 1/2 by 11 inch pages. The inside heading read, “*Everyone's future depends on the education of our children.*” The inside pages had sections entitled “*What the Bond Issue will Accomplish*” and “*Why the Levy is important to Maintaining Quality Education.*”

The inside pages also included a section entitled “*What will all this cost me?*” In this section, the cost was described as an additional 68 cents per \$1,000 of assessed valuation in 2001, or an additional \$68 per year for each \$100,000 in property value, an increase from \$4.57 to \$5.25 per \$1,000 of assessed valuation. The flyer also stated that the tax for Mukilteo School District property owners was one of the lowest in the area and said if both measures were approved on May 16, the tax rate in 2001 would be \$5.25 and would remain among the lowest in the area. The flyer showed the tax rates of four school districts. Mukilteo and its 2001 rate of \$5.25 were shown in bold print to emphasize that its rate was the lowest of those listed. The flyer did not list any districts with a lower rate than Mukilteo.

The back of one of the pages of the flyer was entitled, “*On Tuesday, May 16 you can help decide the quality of Mukilteo schools in the future.*” The flyer then makes the subjective claim, “*Mukilteo schools have earned an excellent reputation.*” This comment is followed by statements about high student achievement test scores and low administrative costs in the district. The flyer also says that many people have moved to Mukilteo because of the excellent school system. The flyer ends with a message from Board President Ron Woldeit and a note directing

the reader to the district's Internet site if the reader wants more information about the bond and levy proposals.

**PowerPoint Presentation and Slides** – Mukilteo School District produced a PowerPoint presentation with slides that focused on the bond and levy proposals. It was initially produced to educate board members about the details of the proposals after the board approved the March 14<sup>th</sup> ballot measures. It was then used for at least two public presentations and was posted on the district's Internet site. There were 55 slides in the power point presentation when it was posted on the district's Internet site. Several of the slides were promotional and went beyond a balanced presentation of the relevant facts.

One of the slides included the following question and answer:

Q: *What happens if the bond fails?*

A: *Students will be less prepared for success in college and the workplace.*

**(Exhibit 11, slide 42)** Subsequent slides read:

**The Need for Personal Safety and Asset Protection Improvements**

- *Schools nationwide are increasingly targets for violent episodes*
- *Staff members have been assaulted*
- *Schools are targets for vandalism*
  - ❖ *Vandalism in February and March alone cost the District \$4,104*
  - ❖ *Staff and student vehicles have been damaged*

***The Need for Parking Lot Safety and Playground Safety Upgrades***

- *The safety of students being picked up and dropped off is a concern at some schools*
- *Pick-up and drop-off interferes with bus traffic*
- *Committee assessed all elementary playgrounds for compliance with Consumer Product Safety Commission (CPSC) Guidelines*
- *The \$105,000 combined with the \$62,367 the District has already invested will only meet minimum CPSC requirements*

*What happens if Bond issue fails?*



- *Limited camera installations*
- *No increases in parking lot lighting*
- *Already limited building maintenance dollars will be redirected to playground upgrades*
- *Storage tanks will not be abated*

**(Exhibit 11`, slides 45, 46)**

The final slides read:

*In Short!*

*If the Bond Issue fails, the District must fundamentally restructure the delivery of educational services to Mukilteo children, or*

*In Short!*

*The infrastructure that should support a quality learning environment for children will instead begin to negatively impact student learning*

**(Exhibit 11, slides 54, 55)**

Most of the district's flyers and publications failed to state the amount of money being requested by the bond and levy proposals. However, most of the flyers and publications directed the reader to the district's Internet site for additional information about the bond and levy. Once at the site, the reader was exposed to an electronic version of the flyer entitled, "*What if the Bond and Levy Fail?*" and the district's PowerPoint slide presentation.

**V.  
CONCLUSION**

Staff alleges, based on the facts specified in Section IV, that Gary Toothaker, Superintendent, Mukilteo School District No. 6, violated RCW 42.17.130 by using or authorizing the use of the facilities of Mukilteo School District to support passage of the district's March 14, 2000 and May 16, 2000 bond and levy ballot propositions.

The respondent violated RCW 42.17.130 by using or authorizing the use of district facilities to promote the March 14 and May 16, 2000 ballot propositions by:

1. producing a one-time-only Mid-Year Report in January, 2000 that promoted the district's bond and levy ballot propositions, at a cost of \$12,067;
2. distributing the publication "*TELL ME MORE ABOUT . . . Bond & Levy Proposal*" to a select group of recipients rather than sending it to all residents in the district;
3. producing and distributing at least five flyers at a cost of \$3,331 that contained opinions, were persuasive, and were not balanced;
4. writing six letters to the editor of *The Beacon* using district equipment and staff, during the six weeks preceding the May 16 election, promoting passage of the May 16 bond and levy;
5. sending out a special mailing from School Board President Ron Woldeit, at a cost of \$1,862, concerning staff layoffs and program reductions, that also promoted the May 16 levy, and that was sent only to parents of the district's students, rather than to all residents of the district;
6. sending out a promotional flyer to all residents of the district, preceding the May 16<sup>th</sup> election, entitled, "*Vital Information about the Bond and Levy Propositions on the May 16<sup>th</sup> Ballot and the Future of the Mukilteo School District*" at a cost of \$12,785;
7. producing a PowerPoint slide presentation, some of which promoted the March 14 and May 16 bond and levy elections, and by posting the slides on the district's Internet site and then directing readers to the site.

PDC staff believes that the district's efforts to put out information about the March 14 and May 16, 2000 bond and levy elections amounted to an advertising campaign designed to persuade voters to approve the bond and levy.

Gary Toothaker, Superintendent,  
Mukilteo School District No. 6  
Notice of Administrative Charges  
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RESPECTFULLY SUBMITTED this 30th day of April, 2001.

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Philip E. Stutzman  
Director of Compliance